

BOARD OF ADJUSTMENT MINUTES

DATE: March 26, 2007



1ST FLOOR
NORTH CONFERENCE ROOM
CITY HALL

Type of Meeting: PUBLIC HEARING

Chairman Paul Smith called a regular meeting of the Board of Adjustment to order at 2:00 p.m. Mr. Smith read the opening statement explaining the functions of the Board of Adjustment. Everyone giving testimony regarding a case before the Board was duly sworn. Notice was previously mailed to all required parties.

BOARD MEMBERS PRESENT:

Chair - Paul Smith.....X
Tom Muncy.....X
Beverly Robinson..... X
Richard Fort X
Robert Middlemas..... X

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CASE	STAFF PRESENTING CASE	GRANTED/DENIED/ CONTINUED
1. Horizon Hill Rd.	Stuart Rohrbaugh	Denied
2. 11 Lodge Street	Nathan Pennington	Granted
3. 127 Acton Circle	Shannon Tuch	Denied
4. 339 New Leicester Highway	Christine Logan	Continued to the April 23, 2007 meeting
5.		
6.		
7.		
8.		

Additional Information

STAFF PRESENT: Beverly Williams, Martha McGlohon, Shannon Tuch, Nathan Pennington, Christine Logan, Stuart Rohrbaugh, Ken Putman

CASE # _1_

ADDRESS: Horizon Hill Rd.

PETITIONER: Bernard Kessel

PIN # 9740.17-22-1203

REQUEST: Petitioner is requesting variances of Section 7-8-4 (f)(5) of the Unified Development Ordinance in order to construct a new multi-story single-family residence on the above referenced property.

Variances:

1. Petitioner is requesting front setback variance of five feet (5') from the front property boundary line in lieu of the minimum required front setback of twenty-five feet (25'). This request would allow the proposed structure to be twenty feet (20') from the front property boundary line.
2. Petitioner is requesting rear setback variance of five feet (5') from the rear property boundary line in lieu of the minimum required rear setback of twenty-five feet (25'). This request would allow the proposed structure to be twenty feet (20') from the rear property boundary line.

Background:

The petitioner supplied Site Plan shows a proposed structure which design and placement will encroach into both the front and rear minimum setback. This .433 acre lot configuration is somewhat odd in that it has plenty of road frontage, but not a lot of depth. The current topography may have an average slope of near 30%. Designing a home on this site with a drive in basement garage can be challenging. The proposed home and driveway location will likely force a considerable amount of fill, retaining walls and storm water infrastructure. The parcel was divided prior to the adoption of zoning regulations as part of the Lakeview Estates subdivision. Petitioner submitted this variance application to seek relief from the above referenced minimum setback requirements.

DISCUSSION: Stuart Rohrbaugh presented the case to the Board and stated the petitioner is seeking two variances. Those variances are a front setback variance of 5 ft. and a rear setback variance of 5 ft. The property is .443 acres in size.

Mr. Kessel addressed the Board and stated he could change the house plan but it would be out of character with the neighborhood. Mr. Kessel stated the first and second floors are approximately 2500 square feet. Mr. Kessel stated the lot is a very irregular shape.

Mr. Fort asked the petitioner if he had considered redesigning his home rather than trying to squeeze it on the lot. Mr. Kessel stated he had the house designed so that it would fit with the lay of the land.

The following adjoining property owners addressed the Board in opposition to the variance request: Ellen Lyle, Mr. Whitaker, John Ashley.

Staff recommended the variance be denied because there are other remedies for sitting the house on the lot that will not require a variance.

Opened Public Hearing: 2:10 p.m.
Closed Public Hearing: 2:27 p.m.

Motion: Richard Fort moved to deny the requested variances.	2 nd By: Tom Muncy	VOTE:
		5 – 0
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		Aye
Beverly Robinson		Aye
Richard Fort		Aye
The variances were denied.		

CASE # _2_

ADDRESS: 11 Lodge Street

PETITIONER: Kessler Asheville II, LLC, Agent Justin Ried

PIN # 9648.19-60-3077; 4028

REQUEST: The petitioner, Kessler Asheville II, LLC., is requesting variances to Sections 7-8-13(f)(6), 7-11-1(b)(4) and 7-11-1(h) of the UDO in order to increase the maximum amount of impervious surface area permitted by the CB-II (Community Business II) zoning district, decrease the amount of channelized automobile storage, and decrease the dimensions of the required sight visibility triangles respectively.

- The CB-II zoning district requires that the impervious surface area not exceed a maximum of 80%. The petitioner is requesting a variance that would allow a maximum impervious surface area of 90%.
- The UDO requires that parking lots with less than 50 spaces provide 20 feet of channelized automobile storage measured from the property line to the terminus of the parking lot entrance. The petitioner is requesting a variance that would allow the measurement to be taken from the front of the curb along Lodge St., to the interior foundation all of the building that would allow for storage of 16 feet.
- The UDO requires that a 10' x 50' sight visibility triangle be maintained at intersections. The visibility triangle is defined as that triangle formed by a ten-foot side measured along the right-of-way of the minor approach from the right-of-way of the major approach, and a 50-foot side measured along the right-of-way of the major approach from the right-of-way of the minor approach. In this instance, the intersection is formed by a public street and a driveway and Lodge Street is the major approach. The petitioner is requesting a variance that would allow the ten-foot measurement to be taken from the front of the curb along Lodge Street.

Project Description:

The project site consist of two parcels comprising approximately .19 acres according to Buncombe County tax records and the submitted site plan. The site is zoned CB-II and is located within the Biltmore Village Historic District Overlay. The project proposes construction of a 12,000 square foot hotel consisting of 3 stories and 20 guest rooms. Valet parking and a loading zone are being provided on the ground level with the main entrance to the site along Lodge Street. Additionally, the project will provide an improved streetscape with street trees and sidewalks along Lodge Street and Hendersonville Road.

This project was reviewed by the Technical Review Committee (TRC) on March 5, 2007 and subsequently continued to the April 2, 2007 hearing due to the fact that variances from the Board of Adjustment were being sought addressing impervious area, channelized automobile storage and sight visibility triangles. The Historic Resources Committee (HRC) approved this project at their March 14, 2007 meeting. The project is in keeping with the Biltmore Village guidelines for full block development and pedestrian oriented design. Furthermore, the project is located in a FEMA Special Flood Hazard Area (SFHA) that requires habitable floor area to be elevated above base flood elevation. Compliance with full block development, pedestrian oriented design and FEMA guidelines makes it difficult to meet the requirements for impervious surface area, channelized automobile storage and sight visibility triangles.

DISCUSSION: Nathan Pennington presented the case to the Board. The case involves three variances: to increases the maximum amount of impervious area, increase the amount of channelized auto storage and increase the dimensions of the required site visibility triangle. The lot is .19 acres and a 12,000 sq. ft. hotel consisting of three stories and 20 guest rooms will be built on the site. The project was reviewed by the Technical Review Committee on March 5th, 2007 and continued to the April meeting due to the requested variances. The Historic Resources Committee approved this project at their March 14th, 2007 meet. In addition, the project is located within a FEMA special floor hazard area that requires habitable floor area to be elevated

above base floor elevation. Compliance with full block development, pedestrian oriented design and FEMA guidelines makes it difficult to meet the requirements for impervious surface area, channelized automobile storage and site visibility triangles.

The building will take up the entire footprint, basically a total block. Secondly with regards to the channelized automobile storage the petitioner is requesting that it be measure from the front of the curb to the interior building wall which is actually a load baring wall. Thirdly they are requesting the site visibility triangle be measured the front of the curb rather than the right-of-way line. Mr. Pennington stated he consulted with the city's Traffic Engineer regarding composing the Staff Report for the channelized auto storage and site visibility triangle.

The Chairman asked to speak to the Traffic Engineer.

Richard Fort moved to postpone this case until later in the meeting to give the Traffic Engineer time to come before the Board. Robert Middlemas seconded the motion. The vote was unanimous to postpone the case until the Traffic Engineer could be present later in the meeting to testify.

CASE # 3

ADDRESS: 127 Acton Circle

PETITIONER: Butch Ness/Value Place, Agent Courtney Nawrot

PIN # 9617.07-67-5849

REQUEST: The petitioner is requesting four (4) separate variances to Sec. 7-13-4(b)(2)b and 7-13-4(b)(2)c to allow for a significant amount of signage for a proposed hotel behind the west Asheville Home Depot. Specifically, the requests seek to:

1. Double the square footage size of proposed free-standing sign.
2. Double the height of the proposed free-standing size.
3. Increase the square footage of an attached wall sign (from 125 sq. ft. to 150 sq. ft.)
4. Increase the number of permissible attached wall signs (from 1 to 3)

The proposed use is a multi-story economy hotel that is seeking to heighten visibility in an effort to attract motorists from Interstate-40. No development plans have been submitted for this development project.

Subject Site Description: The subject area is a portion of the property located at 127 Acton Circle, behind the west Asheville Home Depot in the Enka/Candler area. The proposed hotel

site is located approximately 300 feet from the edge of Interstate-40; however, due to the awkward location of the site, the distance by road is significantly larger at approximately ½ mile as one winds up and around Acton Circle, eventually turning west onto Monte Vista Rd. The site also sits anywhere from 15 to 35 feet above the elevation of I-40 and abuts both the Interstate right-of-way and Monte Vista Road.

In 2000, Home Depot, Inc. submitted an application for a Conditional Use Rezoning for several parcels to allow for the construction of a new home improvement store. The request was approved with a number of conditions that were addressed in final set of approved plans – the properties were recombined with the Home Depot lot totaling almost 21 acres. The proposed hotel is proposed to go behind the Home Depot property on a portion of the existing lot. Any subsequent development on the site will require a Conditional Use Permit application that demonstrates compliance with the original master plan conditions as well as compliance with the conditional use standards outlined in the Unified Development Ordinance; approval by the Asheville City Council will be required.

Other Items to Note:

1. A number of variance requests for the adjacent Home Depot were pursued in September of 2000. Those requests included:

- ? Increase in the size of one attached sign from 125 sq. ft. to 580 sq. ft.
- ? Allow for a second attached sign and increase the size to 290 sq. ft.
- ? Approve a third sign at 51 sq. ft. (to read “contractor pick-up”)
- ? Approve a fourth sign at 29 sq. ft. (to read “nursery”)

The Board reduced the size of the attached signs to a maximum of 211 sq. ft. and allowed the two smaller identification signs.

2. There are a number of non-conforming signs north of I-40 along Smokey Park Highway.
3. Should the Board consider granting a variance, the variance must be conditioned to be contingent upon receipt of an approved development plan for the proposed hotel.

DISCUSSION: Shannon Tuch presented the case to the Board and stated the petitioner wants to increase the height and size for a freestanding sign in addition to seeking additional square footage for attached signage that will be attached to the hotel structure. Staff received modifications to the application on Friday which did not give staff ample time to submit the changes to the Board. The applicant was seeking a variance to allow three attached signs and have reduced that request to two signs. The ordinance does allow two attached signs but not to exceed a total square footage of 125 sq. ft. The applicant is now seeking 131 square feet for one sign and 81 square feet for the other and that is a total of 212 square feet. A variance would still be required in order for staff to approve the increase. The ordinance will allow two signs at 125 sq. ft. the ordinance will allow that total to be split into two signs but combined the signs cannot exceed a total of 125 sq. ft. Therefore they can have one sign at 125 sq. ft. or two signs or two combined for 125 sq. ft. In addition the application is requesting to modify the size of the freestanding sign. They are reducing that sign to 203 sq. ft. The freestanding sign will allow

125 sq. ft. The applicant originally requested 250 sq. ft. They are still seeking a 50 ft. height variance which would be twice as tall as the height allowed in this district.

Staff finds that there is not sufficient hardship to justify granting the requested variances. Further staff feels the increase in signage is excessive and not achieve the desired outcome the petitioner has stated which is to attract motorist from the Interstate traveling west. This property is conditionally zoned and will required approval from Asheville City Council for the hotel plans. No development plans have been submitted and should the Board wish to consider this request any approval would have to be conditioned based on those future approvals.

Mr. Charlie Sheelel, with Site Enhancement Services addressed the Board and stated they are requesting to have notification of their property to motorist not only on I-40 but also once you get off I-40.

Tony Fritex, Site Enhancement Services addressed the Board and stated that the code allows 8 lines to form around their sign. The eight line measurement doesn't incorporate the design of their sign which results in a lot of wasted space. Mr. Fritex also presented to the Board an exhibit showing the signs. He further stated that Value-Place likes to have exposure to both east and west traffic.

Leah Corpen and Ms. Simpson asked the Board to deny the request.

The Board discussed the case.

Opened Public Hearing: 2:42 p.m.

Closed Public Hearing: 3:11 p.m.

Motion: Richard Fort moved to deny the request.	2 nd By: Tom Muncy	VOTE:
		3 – 2
Paul Smith		Nay
Tom Muncy		Aye
Robert Middlemas		Nay
Beverly Robinson		Aye
Richard Fort		Aye
The variances requested were denied		

The Board had a 5 minute recess.

Case #2 was reopened at this point:

Mr. Muncy made a motion to reopen the hearing for case #2. Beverly Robinson seconded the motion. The vote was unanimous to reopen the case.

DISCUSSION: Ken Putman, Traffic Engineer for the City of Asheville addressed the Board and stated in the UDO the site triangle is measured from the back of the right of way line in a vertical distance back up to the minor street of the driveway a distance of 10 ft. Then you go down the other side 50 ft. and that forms the triangle. Any area that has the 0 ft. setbacks and the building is pushed up to the front or the building would touch the right of way line, this triangle would be impossible to achieve. It is impossible to meet the criteria with a 0 ft. setback. The purpose of the site triangle is to make it easy for the person that's trying to get out of the driveway or street to see to the left or to the right. If you have the sidewalk distance you can measure that distance from the front of the curb instead of the right-of-way line. If the measurement is taken from the curb you will achieved the same thing as the site visibility triangle as stated in the ordinance. You've achieve that open area that a car can see before pulling out into the street.

Several Board members stated they feel the ordinance should be worked on due to the problems created by the 0 ft. setback required by the ordinance.

Further Mr. Putman stated that vehicles using the formula above will be positioned in the best so that the driver can see before entering the road. In most downtown areas that position will be across the sidewalk and the car will be up against the edge of the pavement.

Justin Ried addressed the Board to explain the parking for the site.

Mr. Middlemas stated that the UDO created the problem because of the 0 ft. setback required in some districts.

The Board after a lengthy discussion decided to vote on each variance request separately.

Opened Public Hearing: 2:30 p.m. Closed: 2:42 p.m.
 Opened Public Hearing: 3:12 p.m. Closed: 4:09 p.m.

Motion: Tom Muncy moved to grant the petitioners request for a variance on the impervious surface area.	2 nd By: Beverly Robinson	VOTE:
		4 – 1
Paul Smith		Nay
Tom Muncy		Aye
Robert Middlemas		Aye
Beverly Robinson		Aye
Richard Fort		Aye
The variance regarding impervious surface		

area was granted.	

Motion: Beverly Robinson moved to granted the variance for the channelized automobile storage.	2 nd By: Tom Muncy	VOTE:
		4 – 1
Paul Smith		Nay
Tom Muncy		Aye
Robert Middlemas		Aye
Beverly Robinson		Aye
Richard Fort		Aye
The variance request for channelized automobile storage was granted.		

Motion: Tom Muncy moved to granted the variance request for the Site Visibility Triangle.	2 nd By: Robert Middlemas	VOTE:
		4 – 1
Paul Smith		Nay
Tom Muncy		Aye
Robert Middlemas		Aye
Beverly Robinson		Aye
Richard Fort		Aye
The variance for the Site Visibility Triangle was granted.		

CASE # 4
ADDRESS: 339 New Leicester Hwy. PETITIONER: U.S. Cellular PIN # 9629.14-33-5338

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REQUEST: Applicant is requesting a variance of Section 7-13-4 of the Unified Development Ordinance in order to install a wall sign that exceeds the allowable sign size for a tenant in a multi-tenant development.

Variance 1: Petitioner is requesting a size variance to allow for a 76 square foot sign in lieu of the 30 square foot wall sign allowed by the code. The variance, if granted, would result in a sign 2-1/2 times the allowable size.

DISCUSSION: Christine Logan presented the case to the Board. Ms. Logan stated that the proposed sign is 2-1/2 times the size the UDO will allow. Granting this variance request will create a non-conforming sign. The unit for the petitioner is 30 sq. ft. of frontage, therefore they are allowed 30 sq. ft. for their sign.

Mr. Mark Burgess addressed the Board and stated he believes the store signage is of greater advantages to them than the pylon sign located at the front of the property.

After a brief discussion Ms. Tuch addressed the Board and stated she felt -----

Opened Public Hearing: 4:14 p.m.
Closed Public Hearing: 4:35 p.m.

Motion: Tom Muncy moved to continue the case to the next meeting (April 23, 2007)	2 nd By: Richard Fort	VOTE:
		5 – 0
Paul Smith		Aye
Tom Muncy		Aye
Robert Middlemas		Aye
Beverly Robinson		Aye
Richard Fort		Aye
The case was continued to the April 23, 2007 meeting.		

Additional Information

OTHER BUSINESS: Tom Muncy moved to approve the minutes as written. Paul Smith

seconded the motion. The minutes for the February 26, 2007 meeting were approved unanimously.

MEETING:

ADJOURNED: 4:40 p.m.

Read, approved and adopted this _____ day of _____, 2007.

Planning Technician

Chairman